



National Transportation Safety Board

Washington, D.C. 20594

Office of General Counsel

December 14, 2018

VIA EMAIL

Susan.mallery@co.schoharie.ny.us

And VIA UPS Next Day Delivery

Tracking #1Z A4E 715 24 [REDACTED]

Susan J. Mallery, Esq.
Schoharie County District Attorney
P.O. Box 888
157 Depot Lane
Public Safety Facility
Schoharie, NY 12157

Re: Investigation of a 2001 Ford Excursion stretch limousine crash at the intersection of
State Route 30 and State Route 30A in Schoharie, New York
October 6, 2018
NTSB Accident No. HWY19MH001

Dear District Attorney Mallery:

Last Thursday, December 6, 2018, was the two-month anniversary of the crash of the 2001 Ford Excursion stretch limousine in Schoharie, New York.

As we have discussed with you or the New York State Police (NYSP) throughout October and November 2018, the NTSB is following its Congressional mandate to conduct a safety investigation of this crash. The NTSB is an independent agency of the United States and is responsible for investigating and establishing "the facts, circumstances, and cause or probable cause of" major transportation accidents that occur in the United States. *See* 49 U.S.C. 1131. In the case of highway accidents, our statute grants NTSB jurisdiction to investigate those "highway accident[s] ... the Board selects in cooperation with a State." 49 U.S.C. § 1131(a)(1)(B). The NTSB is not a regulatory agency in the conventional sense -- it does not promulgate operating standards and does not certificate organizations or individuals. NTSB investigations are non-adversarial proceedings and are not conducted for the purpose of determining the rights or liabilities of any person. 49 C.F.R. § 831.4. The goal of our work is to foster safety improvements for the traveling public, through formal and informal safety recommendations.

Per your demands, the NTSB has modified its traditional investigative procedures to accommodate the needs of your criminal investigation, allowing your team and the defense team

first access to the vehicles and other evidence. The NTSB's Congressionally-mandated safety investigation, however, cannot be hindered any further.

Although the NTSB team has been successful in gathering some secondary information in coordination with your office and the NYSP, (including the scene data collected by the drone(s), the next of kin information, and the New York Department of Transportation reports), the delays you imposed have denied the NTSB access to the primary, essential evidence, resulting in safety-critical evidence being lost.

Specifically, the NTSB team has been denied access to the crash vehicle, the other vehicles operated by the company, and relevant reports and records. On October 17, 2018, I sent you a letter that requested information and access. Listed below are the outstanding items from that letter and subsequent requests, along with the NTSB's annotations with the information known to date. None of these items have been resolved.

- Immediate access to the vehicle. (NTSB agreed to access the vehicle in coordination with the NYSP and/or the defense team to alleviate any concerns about spoliation.)
 - The NTSB is particularly interested in the occupiable space inside of the vehicle, the structural modifications used to lengthen the vehicle's wheelbase and increase its occupancy, the powertrain components, the steering, and brake systems.
- An unredacted copy of [REDACTED] report(s) and photographs and video taken during his examination.
- Immediate access to the other vehicles impounded from the operating company. (NTSB agreed to access these vehicles in coordination with the NYSP and/or the defense team to alleviate any concerns about spoliation.)
- Appropriate storage of the vehicle to protect its integrity (The NTSB has been working with the NYSP to erect a storage facility around the vehicle, at the NTSB's expense.)
- Appropriate storage of all parts removed from the vehicle to maintain their integrity, and access to those parts. (The NTSB has no updates on the location or means of storage of the parts removed from the vehicle.)

Subsequent to my letter, Dr. Rob Molloy, Director, Office of Highway Safety, has contacted you by telephone and emails, dated November 27, 29 and 30, 2018, to provide updates on the investigative process, and to repeatedly request information, and most importantly, access to the crash vehicle. He explained that much of the NTSB's work would be non-destructive. He attached an Inspection Protocol with his November 27, 2018 email, which is attached again for your convenience.

We believe you have been unresponsive to the NTSB's attempts to obtain information via letter, emails and telephone calls. Instead, what we have been told is that your schedule is full and you are too busy to respond.

Although the NTSB appreciates the need to pursue justice for the crash victims and their families, the NTSB and others have made public statements that the safety investigation is progressing. These statements were based upon representations by you that the agency would have reports and access to the vehicle. Recall that you stated that the NTSB investigative team could

inspect the vehicle once the defense team had completed its work. The defense team's inspection of the vehicle was completed in mid-November, yet the agency has received no response from you to our subsequent requests to examine the vehicle. Further, during our conversation on Sunday, October 7, 2018, you told me that the NTSB would receive a copy of the NYSP's forensic examination report as soon as it is complete. Is it not complete? If it is not, the NTSB asks that you provide all information that the forensic examiner provided to the NYSP and provide the complete report when it is available.

Moreover, during this two-month period, key perishable safety investigative information may have been lost because you denied the NTSB the necessary access. Our investigative team may no longer be able to evaluate the corrosion on the vehicle or its parts at the time of the crash (which is critical when examining the brakes), or the status of the vehicle's electrical system at the time of the crash. Similarly, the NTSB may not be able to evaluate the condition of the other vehicles operated by the company at the time of the crash, which is critical to understanding proper vehicle maintenance.

While we understand the important duties that you are fulfilling, we are gravely concerned that your lack of responsiveness to our requests has seriously impeded our abilities to carry out our Congressionally-mandated duties to properly complete this safety investigation and potentially prevent similar accidents in the future.

Therefore, in consideration of your schedule and the time required to provide a written response, we request a telephone conversation with you on December 18 or 19 so we may develop a plan to move forward. Please advise on which of these dates you may have this phone conversation, as well as a time that you will be available.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kathleen Silbaugh", with a stylized flourish at the end.

Kathleen Silbaugh
General Counsel

Attachment